

Practical Guidance: Submitting Waivers

Cheryl Edgington, SBOP Director
Matt Limoges, SBOP Deputy Director



Agenda

- Waiver basics
 - Types and circumstances
- Pre-submission
 - Information gathering
- Justification
 - Breaking down the elements of RPA-3046
- Required documents
- Public notice requirements
- Analysis and approval process





The Basics of a Waiver

- A waiver is approval to contract directly with supplier(s) without first completing a competitive bidding/proposal process
- Two types of waivers – general and sole source
- Waivers are typically requested for one of the following reasons:
 - Uniqueness
 - Patent/proprietary
 - Intrinsic value
 - Emergency
 - Substantial time pressure



Waiver Types: General & Sole Source

General Waiver

- Multiple vendors
- Maximum one year

The Department of Corrections (DOC) requests a general waiver for the procurement of unplanned and sole source maintenance parts and services from multiple vendors as needed in institutions and Bureau of Correctional Enterprises (BCE) industries.

Sole Source Waiver

- Available only from one source
- No maximum contract length

The Wisconsin Department of Revenue, Wisconsin Lottery requests a sole source waiver for the purchase of the right to use the Green Bay Packers trademark "G" logo, name and other Packer related images on three (3) Instant Scratch game tickets and marketing material for the 2020 football season (May 1, 2020 - March 31, 2021).



Waiver Circumstances: One Source

- Patent or Proprietary
 - The patented or proprietary features of a product or service cannot be obtained from others
 - Good/Service not merchandised through competitive outlets
- Uniqueness
 - Must be able to establish that good/service available from only one source

Example: Sole Source

The SBOP submitted a sole source waiver request to purchase access to the NIGP codes from Periscope.

Justification: NIGP created the codes and licenses use of the codes to Periscope making them the sole provider of access to the codes.



Waiver Circumstances: Intrinsic Value

- When a product has historic, artistic, or educational value
- Viable specifications or standards cannot be determined in the procurement of a professional or technical service

Example of Artistic Value

UW River Falls submitted a sole source waiver request to hire a sculptor to create a Peregrine Falcon on campus.

Justification: Competitive bidding not possible due to the artistic nature of the commodity.



Waiver Circumstances: Emergency

- Risk of human suffering or substantial damage to state property exists
- Requires immediate action
- **Note:** If the nature of the emergency does not allow the agency to wait for waiver approval, goods/services may be procured under Emergency Procurement authority (PRO-503)

Example of Emergency

DVA submitted a request to waive bidding requirements to make an immediate purchase of COVID-19 screening kiosks.

Justification: COVID-19 created a shortage of staff who can screen visitors to the Veterans Homes making an immediate purchase necessary to protect staff, visitors and residents.



Waiver Circumstances: Substantial Time Pressure

- When substantial time pressure exists beyond the agency's control
 - **Note:** This does not include administrative or processing delays or in submitting the necessary documents for purchasing approval

Example of Substantial Time Pressure

DHS submitted a request to waive bidding requirements to contract with a vendor to conduct a security audit of one of its systems.

Justification: The Federal Government issued DHS a conditional order that required them to conduct a third-party audit. In order to meet the timeline established by the Feds, DHS needed to contract immediately with a vendor qualified to perform the service.



Pre-Submission

Information Gathering





Information Gathering

- Preparation and information gathering are essential for building a sound case
- Consider the following questions:
 - How has this good/service been procured in the past?
 - How much was spent in previous years and with whom?
 - How quickly do we need this good/service?
 - Has a quote been obtained?





Information Gathering: Critical Thinking



- How many viable vendors are in this space and what pricing options exist?
- To answer this question, consider:
 - Responses from previous solicitations
 - Market research
 - Independent, verifiable sources



Justification

Form DOA-3046



Section 1: Background

Purpose: Provide the background and description of the procurement request

- Write in clear, non-technical language so request can be understood by persons not directly involved
- ★ Explain how the original good/service was procured
 - If the original contract was previously bid, include the RFB/RFP number and the year it was released
- Identify any states with similar programs that are they also using this supplier





Section 2: Need

Purpose: Describe why the goods or services are needed

- Cite any relevant federal or state legal requirements/statute
- If the supplier must be used to integrate with another entity (federal, municipal) that also uses that supplier, cite the applicable standard
- Include any cost savings, efficiencies
- Other factors to consider:
 - Who uses the goods/services?
 - How are they used?



Section 3: Competitive Process

Purpose: Explain why the competitive bid/RFP process can't be used

- Administrative delays should not account for the cause of a sole source or general waiver
- ★ Market analysis
 - Explain the analysis conducted to show why a competitive process would not produce an acceptable result
 - If the vendor has always been a sole source, describe how often your agency researches the market to determine if new solutions or vendors could meet need



Section 4: Contract Length

Purpose: Describe the length of the contract is proposed

- Length proposed should be reasonable and reflective of the investment being made
- ★ • Follow policy in PRO-206
- General rule:
 - General goods/services- total length less than five years
 - Significant supplier or state investment – up to three-year initial term with renewals
 - Lease or lease purchases – up to eight years



Section 5: Cost

Purpose: Demonstrate that the price is reasonable

- Market research used to show value to the agency
- ★ Even if sole source, vendor needs to demonstrate it is providing fair price such as:
 - Discount from retail price
 - Verification of an equal or better price for similar scope
 - Pricing in line with similar governmental entities
- Document steps that have been taken to negotiate additional savings



Section 6: Agency Investment

Purpose: Cost to stay with existing investment versus cost to replace

- Market research used to show value to the agency
- Parameters built into the Cost Benefit Analysis forms are similar to factors that should be considered in calculating the cost to replace an existing investment
- ★ Explain how the agency calculated the current investment and actual cost of a new solution



Section 7: Impact on WI Businesses

Section 8: Increased Amount

- Section 7: Impact on Wisconsin businesses
 - Typically a statement to reflect if supplier is in WI
- Section 8: Why the present amount exceeded last year's (if applicable)
- ★ • Demonstrate effort to engage supplier in keeping increases minimal
- Examples include:
 - Increased need
 - Vendor rate increases



Section 9: RPA Amendment

- Describe why an amendment is needed
- RPAs can be amended for the following reasons:
 - Increase amount
 - Increase contract length
 - Remember: General waivers can't exceed 12 months
 - Updated scope – minimal
- When is it more appropriate to submit a new waiver request?
 - Increased contract length of more than 12 months (***sole source only***)
 - Substantial change in scope



Documents



Required Documents

- RPA Form DOA-3046
- Public Notice, which must include:
 - Clear description of what is being purchased
 - Intent to make award from private source without soliciting bids/proposals
 - Amount (include all years if multiple)
 - Date upon which a contract or purchase order will be awarded
 - Identification of the private source being used (***sole source only***)

★ Must have minimum of seven days between the posting and the date in which the contract/purchase order will be awarded/issued





Public Notice Cont'd

- If additional vendors express interest in bidding as a result of seeing the public notice, you must...
 - Stop, assess and respond to the vendor before moving forward
- In some cases, you may be required to use the competitive process instead of proceeding with the waiver so,
 - Consult SBOP if you receive a vendor challenge to a public notice





Required Documents

- Quote
- CBA Forms (if applicable)
- Previous case letter (if applicable)
- List of vendors used previously, or vendors estimated to be used
- Statement or letter from vendor verifying sole source or, other evidence of sole source ***(sole source only)***
- Sample contract



Analysis & Approval Process



Waiver Analysis

Review

- SBOP uses information provided by agencies to make decisions and document requests to the Governor

Analyze

- SBOP either approves or reaches out to the agency for more information, questions

Revise

- Waivers may be modified by restrictions the Governor or SBOP deems appropriate



Waiver Approval

Approve

Upon approval, SBOP issues a contract number

Contract

Agency has one year from approval date to initiate the contract

Action

Upon receipt of an RPA contract number, agency may proceed with procurement action



Questions?

Thank you!

